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DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Case Name: Personnel Security Hearing

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This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as "the individual") to receive an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."^{1/}

I. Background

The individual's employer, a Department of Energy (DOE) contractor, requested a security clearance for the individual. He filled out a Questionnaire for National Security Positions (QNSP) in September 2001, and a background investigation was conducted. As part of this investigation, in April 2002 the individual answered further questions posed to him in a Letter of Interrogatory (LOI), and in August of that year, he was interviewed by a DOE Security Specialist. After that Personnel Security Interview (PSI), the individual was referred to a board-certified psychiatrist (hereinafter referred to as "the DOE psychiatrist") for an agency-sponsored evaluation, and on October 31, 2002 the DOE psychiatrist reported his findings to DOE Security.

After reviewing the results of this investigation, the Manager of the local DOE Office determined that derogatory information existed which cast into doubt the individual's eligibility for access authorization. The Manager informed the individual of this determination in a letter which set forth in detail the DOE's security concerns and the reasons for those concerns. I will hereinafter refer to this letter as the Notification Letter. The Notification Letter also informed the individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt regarding his eligibility for access authorization.

^{1/} An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as access authorization or a security clearance.

The individual requested a hearing on this matter. The Manager forwarded the individual's request to the Office of Hearings and Appeals and I was appointed the Hearing Officer. The first portion of the hearing was held near the individual's job site, and two witnesses testified at that time. The DOE psychiatrist testified for the DOE, and the individual testified on his own behalf. Approximately two weeks later, a certified substance abuse counselor testified by telephone on the individual's behalf.

II. Statement of Derogatory Information

As indicated above, the Notification Letter included a statement of derogatory information in possession of the DOE that created a substantial doubt as to the individual's eligibility to hold a clearance. This information pertains to paragraphs (f), (j) and (l) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710 et seq. Paragraph (f) defines as derogatory any information indicating that the individual has "has deliberately misrepresented, falsified, or omitted significant information from a . . . Questionnaire for Sensitive (or National Security) Positions, . . . a Personnel Security Interview, . . . [or] written or oral statements made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization" 10 C.F.R. § 710.8(f).

Under this paragraph, the Notification Letter states that the individual failed to mention arrests in December 1985 for Driving under the Influence of Alcohol (DUI) and in June 1998 for Domestic Battery on his September 2001 QNSP. The Letter also cites answers given by the individual to the LOI and contradictions between some of those answers and information he provided during the August 2002 PSI. When asked in the LOI to explain his failure to report the December 1985 DUI arrest on his QNSP, he wrote "I had considered this a traffic offense because I had been stopped for speeding and charged with reckless driving. I had mistakenly not considered this an alcohol-related incident." LOI at 3. When asked to explain why he did not list his June 1998 Domestic Battery arrest on the QNSP, the individual wrote "This was my mistake. I thought that because the charge was dismissed as unsubstantiated that it did not count." LOI at 5. He also indicated that this arrest was not alcohol-related, LOI at 4, and that he had not had a drink since August 10, 2001. LOI at 6.

When asked during his PSI why he failed to report the Domestic Battery arrest on his QNSP, the individual initially reiterated his explanation that he thought this unnecessary since the charge had been dismissed. However, when it was pointed out to him that the QNSP specifically required him to report arrests even when the charges were later dismissed, he admitted that "the best answer that I can have [as to why he did not report the arrest] is that [I] wasn't wanting it to count against me." PSI at 24-25. Furthermore, contrary to his responses to the April 2002 LOI, he indicated that this arrest was alcohol related, PSI at 22, and that he drank alcohol in October 2001 and January 2002. PSI at 26-27.

Paragraph (j) refers to information that the individual has "[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. § 710.8(j). Under this paragraph, the Letter

refers to the individual's DUI arrests in December 1985, September 1986 and May 2002 and the June 1998 Domestic Battery arrest. The Letter also cites the individual's admissions during the LOI and the PSI that he frequently drank to excess in the past, that his excessive drinking contributed to the failure of his last two marriages, and that he has attended Alcoholics Anonymous meetings since July 2001. LOI at 5-6; PSI at 17-25. Finally, the Letter refers to the DOE psychiatrist's October 2002 diagnosis of "Alcohol Abuse/Possible Dependence by History" and his statement that the individual "presents with a history of long standing chronic and recurrent alcohol use resulting in at least two arrests and convictions for DUI and difficulty with at least two marriages. . . . In that his last drink was more than five months ago, he presently does not suffer from alcohol abuse or dependence, however these diagnoses very well may have applied earlier this year. In that he has remained free of alcohol use throughout this time, this would indicate adequate evidence of rehabilitation and reformation" DOE psychiatrist's report at 3.

Paragraph (l) defines as derogatory information indicating that the individual has "engaged in unusual conduct or is subject to circumstances which tend to show that the individual is not honest, reliable or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress, which may cause the individual to act contrary to the best interests of the national security." 10 C.F.R. § 710.8(l). Under this paragraph, the Letter cites the individual's alcohol-related arrests, his misrepresentations or omissions of significant information from his QNSP and LOI, and previous commitments to stop drinking that he failed to keep.

III. Findings of Fact and Analysis

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, a Hearing Officer must undertake a careful review of all of the relevant facts and circumstances, and make a "common-sense judgment . . . after consideration of all the relevant information." 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable or unfavorable, that has a bearing on the question of whether restoring the individual's security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual's conduct; the circumstances surrounding his conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative proceeding under 10 C.F.R. Part 710 is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). See Personnel Security Hearing, Case No. VSO-0013, 24 DOE ¶ 82,752 at 85,511 (1995) (affirmed by

OSA, 1996), and cases cited therein. After careful consideration of the factors mentioned above and of all the evidence in the record in this proceeding, I find that the individual has failed to make this showing, and that his clearance should therefore not be granted at this time.

At the hearing, the individual did not dispute the allegations set forth in the Notification Letter. Instead, he attempted to show that sufficient mitigating factors exist to indicate that granting a clearance to him would not endanger national security. Specifically, he presented evidence that his alcoholism is in remission, and he contends that this has made him a more honest person.

The individual testified that he began drinking approximately 26 years ago. Hearing Transcript (Tr.) at 11. He admits that he is an alcoholic, and that he must totally abstain from alcohol consumption. Tr. at 14. Accordingly, he stated that he has not had a drink since May 19, 2002, does not keep alcohol in his house, and does not associate with people who drink. He joined Alcoholics Anonymous (AA) in June 2001, Tr. at 8, attends the meetings “three to four” times a week, and has a sponsor. Tr. at 38. He stated that when he provided false or incomplete information to the DOE, he was still blaming other people for his problems. Tr. at 9. However, because of his participation in AA, he said that he has stopped blaming others and started accepting responsibility himself. Tr. at 8.

The DOE psychiatrist then testified that, based on his examination of the individual and the information in his file, the individual had, in the past, met the criteria for alcohol abuse, and some of the criteria for alcohol dependence. However, he added that the five month period of sobriety claimed by the individual during his examination indicated “an ongoing pattern,” and the 17 month period of non-use claimed during the hearing showed “a serious effort toward changing behavior.” Tr. at 32. The DOE psychiatrist also indicated that the individual seemed open and honest about his history of drinking. Tr. at 38.

The individual’s counselor testified that he diagnosed the individual as suffering from alcohol dependence, in sustained remission. He based this diagnosis on the individual’s claim of abstinence from alcohol use since May 2002, which the counselor verified by interviewing the individual’s father and one of his ex-wives. Supplemental Transcript (S. Tr.) at 4. The counselor was also able to confirm the individual’s attendance at AA meetings by having him fill out forms about those meetings. The information asked for in the forms concerns the type, time, location and topic of the meetings, and a summary, including the individual’s feelings about and contributions to the meetings, new information learned, and a description of a new person that he met at the meetings. Individual’s Exhibit A. The counselor further stated that the individual has a strong commitment to his rehabilitation and to the AA program. He based this assessment on the individual’s admission that he is an alcoholic, on his diligence in attending AA meetings and getting a sponsor, and on his abstinence since May 2002. S. Tr. at 6-8. He concluded that the individual “is demonstrating reliability, consistency, accountability, those kinds of things. And my impression at this point is that his prognosis would be good provided [that] he continues to do all of the things he is currently doing.” Tr. at 8.

After reviewing this testimony and the record as a whole, I find that the individual has adequately addressed the DOE's security concerns about his use of alcohol (paragraph (j)). I base this finding primarily on the DOE psychiatrist's report and on the testimony of the psychiatrist and the individual's counselor at the hearing.

As set forth above, the DOE psychiatrist stated in his report that the individual's five month period of abstinence as of the date of his examination in October 2002 "would indicate adequate evidence of rehabilitation and reformation." DOE psychiatrist's report at 3. At the hearing, the DOE psychiatrist indicated that nothing that he had heard had persuaded him to change his initial assessment of the individual. Tr. at 32, S. Tr. at 24. Indeed, he testified that the longer period of abstinence as of the date of the hearing was a stronger indication of the individual's commitment to sobriety. Tr. at 32, 35.

The individual's counselor was able to confirm the period of abstinence claimed by the individual and his AA attendance. His testimony and the documentation of the individual's AA meeting participation convince me that the individual has not consumed alcohol since May 2002 and that he has diligently pursued the AA program. I therefore conclude that the individual has successfully allayed the DOE's security concerns under paragraph (j).

I reach a different conclusion, however, with regard to the DOE's security concerns under paragraphs (f) and (l). Those concerns are that conduct involving questionable judgment, untrustworthiness, lack of candor, or dishonesty could indicate that an individual would not properly safeguard classified information, or would be less than totally forthcoming about breaches of security that might occur.

In this case, the individual deliberately omitted significant information from his September 2001 QNSP and knowingly provided false information in response to the April 2002 LOI in an attempt to cast his past behavior in a more favorable light. Even more recently, during the August 2002 PSI, the individual initially continued to insist that he omitted his June 1998 Domestic Battery arrest from his QNSP because he thought that since the charge had been dismissed, he did not need to list it. PSI at 24. However, when pressed on the matter by the interviewer, the individual admitted that he failed to mention it because he "wasn't wanting it to count against [him]." PSI at 25. The repeated and recent nature of the individual's omissions and falsifications cause me to entertain serious doubts about his honesty and trustworthiness.

Those doubts have not been alleviated by the evidence presented during this proceeding. Indeed, the only testimony in the individual's favor on this issue was his contention that his continuing rehabilitation from alcoholism has made him a more honest person who accepts responsibility for his own actions rather than blaming others, and the DOE psychiatrist's testimony that during the October 2002 evaluation, the individual seemed open and honest about his history of alcohol use. Tr. at 38. However, it appears that even during this evaluation, the individual was less than totally forthcoming. Although the individual and the DOE psychiatrist discussed the individual's involvement in AA since July 2001, he did not inform the DOE psychiatrist that he drank alcohol in October 2001 and again in January 2002. Tr. at 28. Though the DOE psychiatrist's questions would not have specifically elicited that information, he indicated that it would have been very

helpful in making an accurate evaluation, Tr. at 29, and I note that the individual did make this information known to his counselor, and was therefore aware of its significance. S. Tr. at 12-13.

I found the individual's testimony at the hearing to be candid, and I commend him for admitting his past falsifications and accepting the consequences of his own actions. Important as these steps are in the process of reformation, however, they do not sufficiently mitigate the security concerns under paragraphs (f) and (l) about this individual's honesty, reliability and trustworthiness. It is only a subsequent pattern of honesty and responsible behavior that can abate the security concerns that arise from a prior pattern of dishonest behavior. It is a difficult decision because there is strong evidence that the individual has turned his life around, but I find that he has not as yet shown a long enough period of honesty to mitigate the concerns stemming from his prior pattern of dishonesty about matters that go to the heart of his eligibility for access authorization. *Compare Personnel Security Hearing* (Case No. VS0-0013), 25 DOE ¶82, 752 (1995) (13-month period subsequent to covering up use of illegal drugs did not constitute a sufficient pattern of honest behavior) *with Personnel Security Hearing* (Case No. VSO-0410), 28 DOE ¶ 82,786 (2001), *affirmed* (OSA March 21, 2001) (eight years of honest behavior was sufficient evidence that the individual had reformed). I conclude that the individual has failed to adequately address the DOE's security concerns under paragraphs (f) and (l).

IV. Conclusion

As explained in this Opinion, I find that the individual has successfully allayed the DOE's security concerns under paragraph (j), but has failed to adequately address the DOE's concerns under paragraphs (f) and (l). Based on the record in this proceeding, I am therefore unable to conclude that granting the individual a security clearance would not endanger the common defense and security and would be clearly consistent with the national interest. Accordingly, I find that the individual should not be granted a security clearance at this time.

Robert B. Palmer
Hearing Officer
Office of Hearings and Appeals

Date: March 26, 2004